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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,673	10/31/2005	Ian Boast	ENL 347-A	6792
48980	7590	07/20/2007		
YOUNG & BASILE, P.C. 3001 WEST BIG BEAVER ROAD SUITE 624 TROY, MI 48084			EXAMINER SELF, SHELLEY M	
			ART UNIT 3725	PAPER NUMBER
			NOTIFICATION DATE 07/20/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@youngbasile.com  
audit@youngbasile.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/523,673	BOAST, IAN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shelley Self	3725	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on April 2, 2007 has been considered but is ineffective to overcome the prior art reference and an action on the merits follows.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-10 and 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 1 (line 5), the recitation, "it" renders the claim vague, as it is not clear what "it" refers to, Examiner suggests clear and positive recitation to what "it" refers. Additionally regarding claim 1, "A crusher assembly crushing:..." is not clear. Examiner suggests, --A crusher assembly comprising--

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6-9, 12-16 as best as can be understood are rejected under 35 U.S.C. 102(e) as being anticipated by Okuya (6,764,036). With regard to claims 1, 9, 12, 14 and 16, Okuya discloses a crusher assembly comprising a crushing chamber (fig. 1, 2) the crushing chamber having an outlet; and a deflector plate (7) pivotally mounted adjacent the outlet (fig. 2) in which said plate is angled downwards relative to the outlet, wherein the deflector plate is movable downward from said normal operating position to an open position for allowing material to drop directly from the outlet and wherein the deflector plate is also movable upwards relative to said normal operating position.

With regard to claim 2, Okuya discloses the plate (7) mounted for pivotal movement (fig. 2).

With regard to claims 3 and 4, Okuya discloses a hydraulic cylinder (10) operatively coupled with a rear surface of said plate (fig. 2).

With regard to claim 6, Okuya discloses frame, sidewalls and a pair of jaws in which the plate is movably independently relative to the jaws.

With regard to claim 7, Okuya discloses the plate (7) is pivotally mounted on one of the jaws.

With regard to claim 8, Okuya disclose including a fixed jaw, a swing jaw and the plate mounted to the fixed jaw (fig. 2).

With regard to claim 13, Okuya discloses the plate (7) extends at least partially beneath the outlet of the crushing chamber.

With regard to claim 15, Okuya '036 explicitly teaches the use of wear surfaces for crushing surfaces or surfaces contacting the material that is crushed and wear surfaces on a pivoting plate (7; col. 6, lines 40-43).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Additionally claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okuya (6,764,036) in view of Nye (6,129,298). Okuya does not explicitly disclose a hydraulic cylinder. Okuya does however disclose the use of a cylinder (10). The specific selection of a hydraulic cylinder over that of another (i.e. pneumatic) is one of ordinary mechanical expedients and requires only routine skill in the art. Examiner further notes Applicant fails to positively recite any criticality regarding the use of a hydraulic cylinder over that of any other cylinder. Accordingly, in the absence of any positively recited criticality regarding the specific use of a hydraulic cylinder, the selection of one mechanical expedient over that of another does not in itself warrant patentability and would in fact result from routine engineering practices and experimentation.

Moreover Nye teaches that solenoids, air (i.e. pneumatic) actuated piston-cylinder arrangements and hydraulic cylinders are all equivalents and conventional in the mechanical arts (col. 8, lines 50-56). Accordingly, it would have been obvious at the time of the invention to one

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having ordinary skill in the art to construct Okuya's cylinder as a hydraulic cylinder for actuation of the plate (10) because it is well known in the mechanical arts to use any one of a biasing cylinder i.e. hydraulic air/pneumatic as taught by Nye.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okuya (6,764,036) in view of Okuya (6,145,768). Okuya '036 does not disclose a discharge conveyor. Okuya '768 teaches in a closely related art, a crusher including a frame, sidewalls a pair of jaws and a discharge conveyor. Okuya '768 teaches the use of a discharge conveyor to efficiently transport material discharged from the chamber after crushing. Because the references are from a similar art and deal with a similar problem, i.e. disposal of crushed material it would have been obvious at the time of the invention to the skilled artisan to provide Okuya '036 with a discharge conveyor so as to efficiently disposed of crushed material as taught by Okuya '768.

### ***Response to Arguments***

Applicant's arguments have been carefully considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



/Shelley Self/  
Primary Examiner  
Art Unit 3725

July 10, 2007